

FRANCIS MUCHADA  
versus  
EHIAS GONOGOBU

HIGH COURT OF ZIMBABWE  
HUNGWE J  
HARARE, 15 JULY 2008 & 4 APRIL 2012

### **Civil Trial**

*Mr S Tsaurai*, for the plaintiff  
*Mr S Mahuni*, for the defendant

HUNGWE J: Plaintiff issued summons claiming the return of a tractor, an International 444 model, as well as consequential damages as well as costs of suit. In his declaration the plaintiff claims that in July 2005, he had borrowed defendant's tractor trailer in order to carry out certain work at his farm. Later defendant came and asked to use the plaintiff's trailer to tow his trailer back to his farm. He did not return the tractor despite demand.

Defendant disputes this version of events in his plea. He says that the plaintiff gave him the tractor in replacement of a certain motor vehicle that he had bought from the plaintiff under the following circumstances. They are friends. Sometime in or about July 2005, the defendant entered into an oral agreement with the plaintiff in terms of which he gave the plaintiff a Mazda pick-up truck with a Toyota engine. In exchange, the plaintiff was to give the defendant a Nissan Caball truck together with a two herd of cattle.

Defendant duly delivered the said Mazda-cum-Toyota truck together with the cattle. Plaintiff however failed to perform his side of the bargain. As a result the parties entered into another agreement in terms of which the plaintiff agreed to replace the Nissan Caball with the International 444 tractor. In the circumstances the defendant prays for the dismissal of the plaintiff's action.

Plaintiff gave evidence for himself. He did not call any witnesses to support his version of events leading to the claim. In the evidence he confirms that there was indeed an agreement in

which they exchanged motor vehicles. He exchanged his Isuzu Elf truck with a Nissan Caball engine for the Mazda with a Toyota engine. Whilst he took possession of the exchanged truck, the plaintiff says the defendant did not come to pick up his bargain truck from his premises. Plaintiff says the defendant later sold the Isuzu Elf truck back to him as the defendant indicated that he no longer wanted it. The Isuzu Elf is still available for him to take. The tractor issue was a separate issue.

Under cross-examination the plaintiff gave the impression that the parties entered into three separate agreements; the tractor trailer lending agreement; the motor vehicle swap deal as well as the sale of the Isuzu truck back to him.

I did not find the plaintiff to be a credible witness. He failed to explain how the Isuzu buy-back deal arose when the issue of his tractor was still outstanding. The defendant's version is the more probable one. It has a ring of truth. It is supported by their mutual friend who tried to mediate in the dispute.

Choki Fumero told the court that he was aware of the dispute between these two friends. He was aware that the defendant had a smaller pick-up truck which was subject of a swop deal with the plaintiff's bigger Nissan Caball truck. Whilst the plaintiff immediately collected his bargain from the defendant, the latter did not do so. Plaintiff then sold the subject Nissan Caball truck to one Simendi. This conduct frustrated the initial deal. He later met the plaintiff at a Mutoko garage. Plaintiff, on that occasion informed the witness that he had decided to replace the Nissan Caball truck with the tractor. Plaintiff sent him to collect the tractor from where it had broken down and drive it to the defendant's residence to conclude the issue. He disputed the plaintiff's claim regarding how the defendant got into possession of the tractor.

This witness is a friend to both parties. He told the court that he had nothing to gain by giving evidence. Indeed no-one suggested that he would gain anything. I find his evidence more probable than the version given by the plaintiff. It corroborates the defendant's evidence in material respects. I prefer it.

In light of the evidence before the court, I find that the plaintiff has not proved his claim. It is dismissed with costs.

*Hungwe & Partners*, legal practitioners for the plaintiff

*Mantsebo & Company*, legal practitioners for the defendant